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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,132	06/30/2006	Daniel Steiger	EIS.009	1155
48234 7590 08/19/2010 MEREK, BLACKMON & VOORHEES, LLC 673 S. WASHINGTON ST ALEXANDRIA, VA 22314				
EXAMINER WILLIAMS, LEA				
ART UNIT		PAPER NUMBER		
1787				
MAIL DATE		DELIVERY MODE		
08/19/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/585,132

Applicant(s)

STEIGER ET AL.

Examiner

LELA S. WILLIAMS

Art Unit

1787

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 4 and 5.
Claim(s) rejected: 1 and 2.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Callie E. Shosho/
Supervisory Patent Examiner, Art Unit 1787

/LELA S. WILLIAMS/
Examiner, Art Unit 1787

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's argue that the present claims require that alginate in water or an aqueous liquid is being sprayed onto the powder particles. However as acknowledged in the previous office action, Le Gloahec discloses dissolving algin in water (page 2, col. 2, line 37) to obtain an algin comprised solution in either dry or liquid form (page 2, col. 2, lines 71-74) and applying the solution to the dairy product. Although the reference does not detail spraying the algin solution onto the particles and further drying the particles, it is disclosed that the algin solution is used to prepare milk powder or ice cream powder (page 4, col. 2, line 10); meaning the particle powders, which inherently comprise "free surface fat", will come into contact with the algin solution, become wet by said solution, wet powders will characteristically agglomerate, then the powder particles are dried. Given that Le Gloahec states the advantages of using alginous materials with dairy products, products which include powdered milk, because the alginous material will act in the form of a particle coating, as it is meant to act in the present invention, it would have been obvious to one of ordinary skill in the art at the time of the invention to apply the algin in the same manner as disclosed by Fitzpatrick, i.e. by spraying and also combine the teachings of the references to obtain a method which will produce an instant powder with good wettability which will dissolve within the shortest time.

Applicant's also argue the use of alginate on food particles (p.5), however note that the reference discloses the alginate mixture can be useful in containing milk (p.4, col. 1, line 53) and given that it is well known in the art that products containing milk can be in dry or powdered form, one of ordinary skill in the art would have found it obvious that the alginate mixture could be applied to said dry or powdery products. Furthermore, note the intended use of the composition hold no patentable weight.

Applicant also argues that neither Fitzpatrick nor Le Gloahec disclose spraying the alginate mixture. Applicant's attention is directed to Fitzpatrick p.1, lines 71-77, which states "[p]referably, the treatment with the aqueous emulsion is effected by spraying the milk...with the aqueous emulsion", therefore, it is obvious the product is being sprayed.